

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

WHEELMAXX INC. doing business as  
WHEELMAXX OFF ROAD AND TIRE  
REPAIR, LUBEMAXX LUBE AND OIL,  
WEST COAST TIRES & AUTO CENTER,  
and WEST COAST TIRES & TRUCK  
CENTER,

Plaintiff,

v.

MARAAJ SINGH MAHAL, an individual;  
AMERICAN TIRE & AUTO REPAIR  
CENTER, INC., a California corporation,

Defendant.

Case 1:22-cv-01506-NODJ-SKO

**ORDER DIRECTING PLAINTIFFS TO  
FILE SUPPLEMENTAL BRIEFING RE  
MOTION FOR DEFAULT JUDGMENT**

**21 DAY DEADLINE**

Pending before the undersigned is a motion for default judgment (Doc. 21) by Plaintiffs Wheelmaxx, Inc., doing business as Wheelmaxx Off Road and Tire Repair, Lubemaxx Lube and Oil, West Coast Tires & Auto Center and West Coast Tires & Truck Center (the “Plaintiffs”) against Maraaj Singh Mahal, an individual, and American Tire & Auto Repair Center, Inc., a California corporation (“American Tire”) (collectively the “Defendants”).<sup>1</sup> No opposition to the motion has been filed. (*See* Docket.)

<sup>1</sup> The motion for default judgment is referred to the undersigned by E.D. Cal. Local Rule 302(c)(19) for the entry of findings and recommendations to the to-be-assigned district judge. *See* 28 U.S.C. § 636(b)(1)(B).

1 Plaintiffs allege the Defendants have violated the terms of a franchise agreement, resulting  
2 in claims for breach of contract, trademark infringement, service mark infringement, trade dress  
3 infringement and unfair competition under both federal and state law. (Doc. 1). Plaintiffs are  
4 seeking \$95,139.87 in damages, costs and fees, which includes the following: \$15,915.50 for actual  
5 damages resulting from Defendants' breach of contract; \$73,347.17 of actual damages based on  
6 uncollected royalty and marketing fees; \$4,830.00 for attorney's fees; and \$1,047.20 in costs  
7 associated with litigating the action. (Doc. 21-5 at 22).

8 Plaintiffs' damages are not "clearly ascertainable" for several reasons, as California law  
9 requires. Cal. Civ. Code § 3301 (damages arising from a breach of contract must be "clearly  
10 ascertainable in both their nature and origin."). Plaintiffs make no argument in their brief related to  
11 damages other than asserting they are entitled to them. (*See* Doc. 21-5 at 22). Plaintiffs have  
12 included an affidavit in support of their motion by Wheelmaxx CEO Ibrahim Alwareeth, (Doc. 21-  
13 3 at 9), estimating Plaintiffs' damages based on sales reports from other franchises during the  
14 relevant period, but the affidavit does not provide an adequate basis to determine damages.

15 Plaintiffs terminated the agreement on October 26, 2022 (Doc. 21-3 at 5), but the affidavit  
16 calculates the fees beginning on October 1, 2022, without explanation. Plaintiffs have also failed to  
17 provide any authority to demonstrate why the Court should use the average sales from other  
18 franchisees to calculate damages. For example, there is a sizeable disparity between the two  
19 franchisees' sales that Plaintiffs used to estimate Defendants' 2022 unpaid fees. The Tulare  
20 franchise had \$1,145,036.84 in total sales in 2022, while the Fresno franchisor had less than half  
21 that amount in sales (\$506,899.44) for the same period. (Doc. 21-3 at 9). Similarly, the weekly  
22 sales average for other franchisees in 2023 ranged from \$11,387.46 to \$21,722.20. (Doc. 21-3 at  
23 9). Plaintiffs also fail to provide any argument or legal authority to demonstrate they are entitled to  
24 recover costs and attorney's fees. Without such substantiation, the undersigned cannot recommend  
25 awarding the full amount sought for these claims.

26 Accordingly, IT IS HEREBY ORDERED that **within twenty-one (21) days** of entry of this  
27 order, Plaintiffs SHALL file supplemental briefing, together with supplemental declarations and  
28 spreadsheets, if appropriate, addressing Plaintiff's estimated damages. Plaintiffs' supplemental

1 briefing must also provide legal authority stating why Plaintiffs are entitled to recover costs and  
2 attorney's fees.

3  
4 IT IS SO ORDERED.

5 Dated: **January 31, 2024**

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE